

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027  
(Filed February 28, 2005)

**ASSIGNED COMMISSIONER'S RULING  
REGARDING SUPPLEMENTATION OF APPLICATION AND  
OTHER PRELIMINARY MATTERS**

On February 28, 2005, SBC Communications, Inc. and AT&T Corp. (AT&T) (collectively, "Applicants") filed Application 05-02-027 for authorization to transfer control of AT&T Communications of California, TCG Los Angeles, Inc. TCG San Diego, and TCG San Francisco from subsidiaries of AT&T to subsidiaries of the combined organization that will result from AT&T's planned merger with SBC.

**Supplementation of the Application**

Applications for approvals of mergers or acquisitions are governed principally by Pub. Util. Code § 854(a). However, some years ago, the Legislature added §§ 854(b) and (c) to ensure specific issues were addressed with respect to such transactions involving the state's largest utilities.

Applicants assert that they are exempt from application of § 854(b) because “this transaction involves the merger of a telecommunications holding company with another holding company. Because this transaction does not directly involve any public utility, the requirements of § 854(b) do not apply.”

(Application at 14.) The Applicants cite to that portion of § 854(b) that identifies its applicability as “...where any of the utilities that are parties to the proposed transaction...” has the requisite California jurisdictional revenues. They distinguish this from § 854(c)’s reference to “...where any of the entities that are parties to the proposed transaction...” They suggest that because in their view neither of the parties to the transaction for which approval is sought is a utility, § 854(b) is not applicable. (Application at 18.)

As noted in the application, the SBC Communications Inc. entity into which AT&T Corp. will be merged “is a newly formed entity, created for the specific purpose of this transaction, named Tau Merger Sub Corporation (“Tau”). AT&T will be the surviving entity of the merger with Tau for all legal purposes and the combined entity will retain the name AT&T Corp.” (Application at 12.) AT&T Corp. is also identified as a holding company.

At this time, I am not going to rule conclusively on the applicability of § 854(b). It is my expectation that other parties will wish to provide insights on this topic as well. However, I shall require the Applicants to amend their joint application as soon as possible to ensure the application contains all the information they believe necessary and appropriate to demonstrate their compliance with all of the provisions of §§ 854(b) and (c) to the extent that they have not already been done. I make this ruling not to determine the applicability of the statute, but in the interest of ensuring that any potential disagreement over the statute’s applicability not be cause for delay in processing the Application.

I encourage the Applicants, in their own interests of allowing timely consideration of their Application, to err, if at all, on the side of comprehensive compliance.

Because the information required pursuant to § 854(b) may potentially impact the extent to which various parties may chose to participate in this case, I am going to also direct that the protest period for this Application be extended for an additional 15 days beyond the date on which the supplemental filing is made. I also direct that the assigned Administrative Law Judge shall schedule a prehearing conference as soon as practical following the conclusion of the protest period to ensure that this matter is moved forward expeditiously, in keeping with its importance and the need for careful consideration of the issues presented.

#### **Documents Filed Under Seal**

Pursuant to Rule 74.7 of the Commission's Rules of Practice and Procedure, the Joint Applicants seek leave to file under seal Exhibits 15, 16, 17 and 18 to the Application, filed concurrently therewith.

Pursuant to Rule 17, the Application includes financial reports that are filed annually with this Commission. The four California certificated carriers that are owned and controlled directly and indirectly as subsidiaries of AT&T Corp. filed under seal the proprietary and confidential information contained in those reports. The Applicants state that Exhibits 15, 16, 17 and 18 contain proprietary and confidential financial data relating to the California certificated direct and indirect subsidiaries of AT&T Corp. Because of the proprietary and confidential nature of the data contained in these exhibits, good cause exists for filing these exhibits to the Application under seal, as directed in the ruling below.

### **Designation of Principal Hearing Officer**

I hereby designate Administrative Law Judge Thomas R. Pulsifer as the Principal Hearing Officer in this proceeding.

### **Preliminary Categorization**

I hereby preliminarily categorize this proceeding as “Ratesetting,” as defined in Rule 5(c) of the Commission’s Rules of Practice and Procedure.

#### **IT IS RULED** that:

1. SBC Communications Inc. and AT&T Corp. shall amend Application 05-02-027 to ensure that the Application contains all the information that would be required if Pub. Util. Code §§ 854(b) and (c) are found applicable.
2. The protest period for this application shall be extended by 15 days beyond the date on which the application amendment is filed.
3. The Principal Hearing Officer designated for this proceeding is Administrative Law Judge (ALJ) Thomas R. Pulsifer.
4. The assigned ALJ shall schedule a prehearing conference (PHC) for this application as soon as practical after the conclusion of the protest period.
5. Among the topics to be addressed at the PHC is the opportunity for parties to brief the question of the applicability of Pub. Util. Code § 854(b) to this transaction.
6. For good cause shown, the Motion of Joint Applicants for leave to file under seal Exhibits 15, 16, 16, and 18 is hereby granted. Such exhibits shall remain under seal for a period of two years from the date of issuance of this ruling unless Applicants make a timely request for extension of confidential treatment by filing a separate motion with good cause shown at least one month before expiration of the two-year period.

7. This preliminary category for this proceeding is designated as “Ratesetting,” as defined in Rule 5(c) of the Commission’s Rules of Practice and Procedure.

Dated March 16, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties who have provided an electronic mail address, this day served a true copy of the original attached Assigned Commissioner's Ruling Regarding Supplementation of Application and Other Preliminary Matters on all parties of record in this proceeding or their attorneys of record.

Dated March 16, 2005, at San Francisco, California.

/s/ FANNIE SID  
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Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.